

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ELBERT POWELL and TACIA  
POWELL,

VS.

AMERICAIN BANKERS  
INSURANCE COMPANY, et al.

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CIVIL ACTION NO:  
CV-2011-00133

**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
NOTICE OF REMOVAL AND MOTION FOR REMAND**

Comes now Plaintiff, and files this response in opposition to the Notice of Removal filed by Defendant and moves the Court to remand this case for lack of subject matter jurisdiction and respectfully states as follows:

1. The Plaintiff filed a Complaint in the Circuit Court of Wilcox County, Alabama, against Defendants, for an unspecified amount of damages. The Complaint contained causes of action for breach of contract, wanton misconduct, and other misconduct.

2. The Defendant was served with the Summons and Complaint.

3. The Defendant in this civil action filed a Notice of Removal to this Court on the basis of diversity of citizenship, alleging that the amount in controversy exceeds \$75,000, exclusive of costs and interest. The only basis provided by these Defendants for the allegation that the jurisdictional amount is satisfied is an unsupported and unverified "contention" with insufficient explanation or support.

4. "Where a Plaintiff has made an unspecified demand for damages in state court, a removing Defendant must prove by a preponderance of the evidence that the amount in controversy more likely than not exceeds the

\$75, 000 jurisdictional amounts.” *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1357 (11th Cir. 1996), *overruled on other grounds*, *Cohen v. Office Depot, Inc.*, 204 F.3d 1069 (11th Cir. 2000).

5. These Defendant conclusory contention that the jurisdictional amount is satisfied, without underlying facts, fails to satisfy the Defendant’s burden. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319-20 (11th Cir. 2001). Furthermore, the Defendant has refused to not even pay one dollar on this claim.

WHEREFORE, premises considered, Plaintiff moves the Court to grant his Motion to Remand based upon the Defendants failure to establish the jurisdictional requirements for diversity jurisdiction by a preponderance of the evidence.

Respectfully submitted,

/s/Leston C. Stallworth Jr.  
LESTON C. STALLWORTH JR  
STAO76  
Attorney for PLAINTIFF  
53 N. MOUNT PLEASANT AV  
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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this the 30th day of March, 2011 electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

/s/Leston C. Stallworth Jr.

LESTON C. STALLWORTH JR  
STAO76

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served counsel for all parties and unrepresented parties to the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of the same in a properly addressed envelope with adequate 1st class postage thereon or delivering a copy of same by hand to the regular business office of said counsel:

/s/Leston C. Stallworth Jr.

LESTON C. STALLWORTH JR  
STAO76